

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 21st day of February, two thousand thirteen.

PRESENT:

JOSÉ A. CABRANES,
BARRINGTON D. PARKER,
RICHARD C. WESLEY,
Circuit Judges.

HERMAN GOMEZ ZAPATA,
Petitioner,

v.

11-5250
NAC

ERIC H. HOLDER, JR., UNITED STATES
ATTORNEY GENERAL,
Respondent.

FOR PETITIONER: Heather Yvonne Axford; Anne
Pilsbury, Central American Legal
Assistance, Brooklyn, New York.

FOR RESPONDENT: Stuart F. Delery, Acting Assistant
Attorney General; Lyle D. Jentzer,
Senior Counsel, National Security

Unit; Zoe J. Heller, Office of
Immigration Litigation, U.S.
Department of Justice, Washington
D.C.

UPON DUE CONSIDERATION of this petition for review of a
Board of Immigration Appeals ("BIA") decision, it is hereby
ORDERED, ADJUDGED, AND DECREED that the petition for review
is DENIED.

Petitioner Herman Gomez Zapata, a native and citizen of
Colombia, seeks review of the November 30, 2011, decision of
the BIA affirming the May 4, 2010, decision of Immigration
Judge ("IJ") Thomas J. Mulligan, denying Gomez Zapata's
application for asylum, withholding of removal, and relief
under the Convention Against Torture ("CAT"). *In re Herman
Gomez Zapata*, No. A093 341 938 (B.I.A. Nov. 30, 2011), *aff'g*
No. A093 341 938 (Immig. Ct. N.Y. City May 4, 2010). We
assume the parties' familiarity with the underlying facts
and procedural history in this case.

As an initial matter, the only issue before us is the
agency's determination that Gomez Zapata was not credible.
See Yan Chen v. Gonzales, 417 F.3d 268, 271 (2d Cir. 2005).
Under the circumstances of this case, we have reviewed both
the IJ's and the BIA's opinions as to Gomez Zapata's
credibility "for the sake of completeness." *Zaman v.*

1 *Mukasey*, 514 F.3d 233, 237 (2d Cir. 2008). The applicable
2 standards of review are well-established. See 8 U.S.C.
3 § 1252(b)(4)(B); see also *Xiu Xia Lin v. Mukasey*, 534 F.3d
4 162, 165-66 (2d Cir. 2008). For asylum applications
5 governed by the REAL ID Act, such as the application in this
6 case, the agency may, considering the totality of the
7 circumstances, base a credibility finding on an asylum
8 applicant's demeanor, the plausibility of his account, and
9 inconsistencies in his statements and other record evidence,
10 without regard to whether they go "to the heart of the
11 applicant's claim." 8 U.S.C. § 1158(b)(1)(B)(iii); *Xiu Xia*
12 *Lin*, 534 F.3d at 163-64.

13 Substantial evidence supports the agency's adverse
14 credibility determination. In finding Gomez Zapata not
15 credible, the IJ reasonably relied in part on Gomez Zapata's
16 demeanor, noting, in addition to extreme nervousness, a
17 specific instance on direct examination when his testimony
18 was hesitant, lacked a natural flow, and gave the impression
19 that he was attempting to recall a script. See 8 U.S.C.
20 § 1158(b)(1)(B)(iii); see also *Majidi v. Gonzales*, 430 F.3d
21 77, 81 n.1 (2d Cir. 2005). That finding is supported by the
22 hearing transcript.

1 The IJ's demeanor finding is entitled to deference and
2 the adverse credibility determination is further supported
3 by specific examples of contradictory testimony. *See Li Hua*
4 *Lin v. U.S. Dep't of Justice*, 453 F.3d 99, 109 (2d Cir.
5 2006) ("We can be still more confident in our review of
6 observations about an applicant's demeanor where, as here,
7 they are supported by specific examples of inconsistent
8 testimony."). Indeed, the IJ reasonably found discrepancies
9 between Gomez Zapata's testimony and his supporting
10 affidavits as to how he discovered the identity of those
11 threatening him and whether his brother in the United States
12 learned of his troubles from their mother while Gomez Zapata
13 was still in Colombia or from Gomez Zapata after his
14 departure from Colombia. *See* 8 U.S.C. § 1158(b)(1)(B)(iii).
15 Gomez Zapata failed to provide a compelling explanation for
16 these discrepancies. *See Majidi*, 430 F.3d at 80-81.

17 The agency also did not err in declining to credit
18 Gomez Zapata's corroborating evidence, and relying, in part,
19 on his failure to credibly corroborate his claim. *See Xiao*
20 *Ji Chen v. U.S. Dep't of Justice*, 471 F.3d 315, 341-42 (2d
21 Cir. 2006) (providing that the weight afforded documentary
22 evidence "lies largely within the discretion of the IJ")
23 (internal quotation marks and citation omitted); *see also*

1 *Biao Yang v. Gonzales*, 496 F.3d 268, 273 (2d Cir. 2007).

2 Thus, given the absence of credible corroborating evidence
3 as well as the discrepancies and demeanor finding, we find
4 no error in the agency's denial of Gomez Zapata's
5 application for asylum, withholding of removal, and CAT
6 relief on credibility grounds. *See Paul v. Gonzales*, 444
7 F.3d 148, 156 (2d Cir. 2006).

8 For the foregoing reasons, the petition for review is
9 DENIED. As we have completed our review, any stay of
10 removal that the Court previously granted in this petition
11 is VACATED, and any pending motion for a stay of removal in
12 this petition is DISMISSED as moot. Any pending request for
13 oral argument in this petition is DENIED in accordance with
14 Federal Rule of Appellate Procedure 34(a)(2), and Second
15 Circuit Local Rule 34.1(b).

16 FOR THE COURT:
17 Catherine O'Hagan Wolfe, Clerk
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